

QA
20002



FEDERAL HIGHWAY
ADMINISTRATION

96 MAY 13 A 7:31

LEGS./REGS. DIV.

May 10, 1996

Docket Clerk, Room 4232
Office of the Chief Counsel
Federal Highway Administration
400 Seventh Street SW
Washington DC 20590

Via FAX to 202-366-8842

FHWA-97-2277-15

RE: Comments to Docket No. MC-96-6

Pinnacle Transport Services, Inc. offers various levels of assistance to private and for-hire motor carriers, and companies supplying drivers to such regulated entities, in compliance with Parts 382, 383, 390, and 391 of the Federal Motor Carrier Safety Regulations. We are very involved with the process of qualifying drivers throughout the continental United States.

§382.405(f) For clarity, and language consistency with the proposal in §390.15, "within 30 days" should be moved to read, "Records shall be made available to a subsequent employer within 30 days of receipt of written authorization of the driver."

§382.413(a)(1)(ii) Eliminate Completely. It is unreasonable to assume a previous employer has the ability, or the means, to verify the actions of an individual who was most probably terminated for a gross violation of policy and safety rules. If a driver decides there is no reason to participate in rehabilitation, we cannot find that this act bars the driver from working as a CMV operator.

§382.413(a)(2) Eliminate Completely. The information is redundant, and will confuse the process with different people trying to figure out the parameters of "the past three years".

§382.413(a)(2)(b) Eliminate Completely. "If feasible" makes the first part of the proposal worthless, and the elimination of the phrase would make it onerous. The requirement to continue the qualification process for an individual who may be terminated during a probation period, or who may voluntarily quit within 30 days, does nothing to promote safety—it unnecessarily increases operating costs for the carrier.

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611 North Kingery Highway • Bensenville, IL 60106 • (708) 766-1114 • Fax No. (708) 766-2599 4522

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- §382.413(a)
(2)(f) Eliminate Completely. An applicant can generate a very "official looking" document to say whatever is required by the regulations. Since "assurance" can only come from the prior employer, specifying only one method of data sourcing serves no useful purpose.
- §382.412(a)
(2)(g) Eliminate Completely. Without the driver's ability to get a second opinion, you are leaving the individual at the discretionary mercy of a single SAP. What if the driver doesn't want "rehabilitation"? If the need is not realized, going through a program is a waste of time and money. Also, what if the alleged information is not available due to natural disaster, death, business failure, or just plain contrariness? You are over-reaching here.
- §382.412(a)
(2)(h) Eliminate Completely. Until someone can offer evidence of widespread errors in the accurate reporting of test results, this requirement will not add anything to the safety process. Results are known, and "comments" will not change history. Additionally, this "opportunity to review" will only steal valuable time from relevant safety efforts.
- §382.412(a)
(2)(i) If we can assume the dates in the referenced section will not change, why not just name them here to eliminate page turning.
- §383.35(f) Eliminate Completely. Until the Department of Labor makes this suggestion generally applicable to all employers, you are unreasonably forcing companies subject to your regulations to become clearinghouses for minutiae. While we in no way support the idea, if this proposal is an effort to correct some widespread conspiracy in the workplace that is falsifying work records, it would be of more direct impact if all prior employers were forced to send copies of employment histories to former employees when they are sent to potential employers. Until an industry-wide problem is demonstrated, this proposal serves no purpose.

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§390.15(c) Eliminate Completely. While copies of accident reports required by State or other governmental entities or insurers are of material benefit to an authorized representative or special agent of the FHWA during an investigation or special study, releasing this file data to a new or prospective employer will seriously compromise the prior employee's confidentiality. Potential or pending litigation may be put at risk; workers' compensation data is privileged; and medical records may be compromised. If more objective information is really required, copies of citations and police reports are available from the State.

§391-21(d) Completely Eliminate the Additional Language.
See comments in §383.35(f).

§391.23(c) Current language requires that the investigation "must be made within 30 days of the date employment begins". Are you really saying it now only has to start within 30 days? This change will do nothing to keep unsafe drivers off the road. In fact, it will allow unsafe drivers more opportunity to do harm.

§391.23(c)(1)
(ii) Eliminate Completely. Out of service orders are more indicative of the safety mindset of the employer than of the employee. I have never met a worker who has said:

"My perfect job is one, that to keep it, will give me the opportunity to work long hours at physically debilitating tasks without proper rest; and then force me to continue to work at the pleasure of a supervisor or client—sometimes without pay."

in After spending 2.5 telephone hours with motor vehicle officials the states of IL, IN, and WI trying to find out if an hours-of-service violation will appear on a driver's MVR for employment purposes, Indiana indicated the offense is not a moving violation; and, therefore would not appear on the MVR. IL and WI

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§391.23(c)(1)(ii)
Continued. responses are not available as of this writing. If these violations have real importance, we suggest you place the burden on the states to classify these violations as moving violations; and they will be readily available with a simple MVR check.

§391.23(c)(1)(iii) Eliminate Completely. The simple, and in most circumstances the most accurate, answer is "I don't know.". Also see comments referring to the proposal at §382.412(a)(2)(g). Pre-employment and random testing should control the issue.

§391.23(c)(1)(iv) Eliminate Completely. An employer's watchdog responsibilities should be strictly limited to issues regarding safety sensitive job performance. You imply the employee must be continuously monitored for compliance with "laws" beyond your authority.

§391.23(c)(2) Eliminate Completely. If the prospective employer has interest, further discussion will take place. There is no valid reason to mandate a meeting if all the parties do not see the value in the exercise. This is not the forum to re-write general employment law; and the proposal places undue burden on the hiring process.

GENERAL:

In reading that this proposal is mandated by section 114 of the Hazardous Materials Transportation Authorization Act of 1994, we urge the FHWA to recall the contention and litigation regarding the issue of Pre-Employment Alcohol Testing because it too was "mandated". Often, congressional mandates evolve from narrow issues which soon become inaccurate generalizations working to the detriment of the real issues.

While however well-intentioned this proposal is, it fails in its practical application to the performance of the activity of hiring CMV operators. We strongly urge the drafters of any final rule to solicit input from industry professionals regarding the final product. This input may come from writings, voice conferencing, and/or

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physical meetings in Washington or other sites around the country. Hiring CMV operators is nothing like hiring general white/blue collar service/industrial employees. The job does not fit a basic Human Resources check list, but requires specific knowledge and talents that are not easily acquired.

To assist our clients, we utilize the services of a major employment record database and MVR provider. Exhibit A is attached for your reference as a sample of employment record information available to the industry. Identification of the individual and prior companies has been obliterated for confidentiality. We find this is the best source for accurate information; but as you will see, there are many obstacles in the way that you must clear with other governmental entities.

POST SCRIPT TO THE ISSUE OF OUT-OF-SERVICE ORDERS:

I have just been contacted by Mr. Emil Caliendo of the Illinois Secretary of State's office regarding the handling of this issue. Illinois orders are not part of the public record; and are only available to law enforcement, or to the CDL holder by specific request of a confidential driving record. It is quite simple for a CMV operator in IL to never have the information reported to anyone. Your proposal on this issue needs substantial work if the information has real value. So far, the states do not really care beyond catching someone driving during the term of the order.

Respectfully submitted,


Robert F. Schafer
VP/GM

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APPENDIX A

Sample
Employment
Record

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DAC SERVICES 10-MAY-1996 08: 7:29
DRIVER HISTORY

EMPLOYMENT RECORD 10-MAY-1996 08:58:29

MEMBER#

ORIGINAL DATA RECEIVED BY DAC ON 06-27-86

NOTE: A SEVEN (7) YEAR PERIOD HAS ELAPSED SINCE EMPLOYMENT TERMINATION. IT IS PROHIBITED TO DISCLOSE: WORK RECORD. ELIGIBILITY FOR REHIRE. NUMBER OF ACCIDENTS. AND REASON FOR LEAVING.



*Conflicts with current
383.35 (L) - 3000
proposal.*

FROM 4/86 TO 6/86
LIC:KS.A6J6V9
STATUS:COMPANY DRIVER
DRIVING EXPERIENCE:2ND DRIVER OF A TEAM
EQUIPMENT OPERATED:REFRIGERATED
LOADS HAULED:GEN. COMMODITY

EMPLOYMENT RECORD 10-MAY-1996 08:58:33

MEMBER#

ORIGINAL DATA RECEIVED BY DAC ON 02-11-87

NOTE: A SEVEN (7) YEAR PERIOD HAS ELAPSED SINCE EMPLOYMENT TERMINATION. IT IS PROHIBITED TO DISCLOSE: WORK RECORD. ELIGIBILITY FOR REHIRE. NUMBER OF ACCIDENTS. AND REASON FOR LEAVING.



FROM 10/86 TO 10/86
LIC:KS.A6J6V9
STATUS:LEASE DRIVER/EMPL. OF INDEP. CONTRACTOR

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EMPLOYMENT RECORD 10-MAY-1996 08:38

MEMBER

ORIGINAL DATA RECEIVED BY DAC ON 01-08-88

NOTE: A SEVEN (7) YEAR PERIOD HAS ELAPSED SINCE EMPLOYMENT TERMINATION. IT IS PROHIBITED TO DISCLOSE: WORK RECORD. ELIGIBILITY FOR REHIRE. NUMBER OF ACCIDENTS. AND REASON FOR LEAVING.



FROM 6/87 TO 12/87
LIC:KS.A6J6V9
STATUS:LEASE DRIVER/EMPL. OF INDEP. CONTRACTOR
DRIVING EXPERIENCE:OVER THE ROAD
SINGLE DRIVER
EQUIPMENT OPERATED:DRY BOX
LOADS HAULED:GEN. COMMODITY

EMPLOYMENT RECORD 10-MAY-1996 08:58:46

MEMBER

ORIGINAL DATA RECEIVED BY DAC ON 06-08-88

NOTE: A SEVEN (7) YEAR PERIOD HAS ELAPSED SINCE EMPLOYMENT TERMINATION. IT IS PROHIBITED TO DISCLOSE: WORK RECORD. ELIGIBILITY FOR REHIRE. NUMBER OF ACCIDENTS. AND REASON FOR LEAVING.



FROM 4/88 TO 5/88
LIC:KS.A6J6V9
STATUS:LEASE DRIVER/EMPL. OF INDEP. CONTRACTOR
DRIVING EXPERIENCE:OVER THE ROAD
EQUIPMENT OPERATED:DRY BOX
REFRIGERATED
LOADS HAULED:GEN. COMMODITY
HAZARDOUS MATERIAL
REFRIGERATED

EMPLOYMENT RECORD 10-MAY-1996 08:58:51

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EMPLOYMENT RECORD 10-MAY-1996 08:58:51

MEMBER# [REDACTED]

ORIGINAL DATA RECEIVED BY DAC ON 11-21-89

FROM 8/89 TO 11/89
OF ACCIDENTS(EQUIPMENT WAS INVOLVED IN AN ACCIDENT OR DAMAGED WHILE ASSIGNED TO THE DRIVER REGARDLESS OF FAULT): 0
LIC:KS.A6J609
ELIGIBLE FOR REHIRE:NO
REASON FOR LEAVING:RESIGNED/QUIT OR DRIVER TERMINATED LEASE
STATUS:LEASE DRIVER/EMPL. OF INDEP. CONTRACTOR
DRIVING EXPERIENCE:MOUNTAIN DRIVING
OVER THE ROAD
SINGLE DRIVER
EQUIPMENT OPERATED:FLAT BED
LOADS HAULED:GEN. COMMODITY
WORK RECORD:PERSONAL CONTACT REQUESTED

.....
ORIGINAL DRIVER REBUTTAL ENTERED ON 09-13-90
I BECAME ILL AND SO I NOTIFIED THE COMPANY. I WAS INSTRUCTED TO TAKE THE TRUCK TO BUFFALO, WYOMING BY THE TRUCK BOSS. I WENT TO THE DOCTOR AND I WAS DIAGNOSED WITH PNEUMONIA. I TOLD THE TRUCK BOSS I WOULD BE OFF APPROXIMATELY 1 MONTH.

I DID NOT RESIGN, I WAS JUST ON SICK LEAVE.

Does not add to safety efforts.

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EMPLOYMENT RECORD 10-MAY-1996 08:59:18

MEMBER# [REDACTED]

ORIGINAL DATA RECEIVED BY DAC ON 01-03-96

FROM 5/95 TO 12/95

OF ACCIDENTS(EQUIPMENT WAS INVOLVED IN AN ACCIDENT OR DAMAGED WHILE ASSIGNED TO THE DRIVER REGARDLESS OF FAULT): 0

LIC:IA.485426098

ELIGIBLE FOR REHIRE:REVIEW REQUIRED BEFORE REHIRING
REASON FOR LEAVING:RESIGNED/QUIT OR DRIVER TERMINATED LEASE

STATUS:LEASE DRIVER/EMPL. OF INDEP. CONTRACTOR

DRIVING EXPERIENCE:OVER THE ROAD

EQUIPMENT OPERATED:REFRIGERATED ...

LOADS HAULED:GEN. COMMODITY

REFRIGERATED

WORK RECORD:SATISFACTORY

>>> CONNECTING TO CDLIS+ <<<

CDLIS REPORT 10-MAY-1996 09:00:19.36

[REDACTED]
DOB: 04/24/1937. SEX: M. HGT: 6'00". WGT: 200. EYE: BLU

CURRENT CDL: IA [REDACTED]

ADDITIONAL CDLIS INFORMATION:

[REDACTED]
DOB: / /

PRIOR CDL: KS. [REDACTED]

>>> END OF CDLIS REPORT <<<

DOCKET

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